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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |  |
|------------------------|--|
| Proceeding             | 91232893   |
| Party                  | Defendant<br>Michel Ontiveros, Fernando  |
| Correspondence Address | ALICIA DANIELA AGUIAR SÃ#NCHEZ<br>COLONIA LA VENTA DEL ASTILLERO, CAMINO ESCUELA DE AGRICULTURA 7620<br>ZAPOPAN 45221,<br>MEXICO<br>daniela.aguiar@michel.com.mx, escalante.solana@gmail.com |
| Submission             | Answer   |
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| Date                   | 03/27/2017   |
| Attachments            | Answer_Opposition_91232893.PDF(637698 bytes )  |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

|                                      |                  |  |
|--------------------------------------|------------------|--|
| WYETH HOLDINGS LLC.,<br><br>Opposer, | )<br>)<br>)<br>) | Opposition No.: 91232893<br><br>Application No.: 86/969,744  |
| v.                                   | )                | Mark:                 |
| FERNANDO MICHEL ONTIVEROS,           | )                | Published in the Official Gazette on   |
| Applicant.                           | )                | August 16, 2016  |
|                                      | )                | Cancellation No.: _____  |
|                                      | )                | Registration Nos.: 3399034 <i>et al.</i>   |
|                                      | )                | Marks:  <i>et al.</i> |
| _____                                | )                |  |

**ANSWER TO NOTICE OF OPPOSITION**

Applicant, Fernando Michel Ontiveros, ("Applicant") hereby replies to the numbered grounds for opposition set forth in Opposer's Notice of Opposition as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies those allegations.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and therefore denies those allegations.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and therefore denies those allegations.
4. Applicant makes no answer to the allegations in Paragraph 4 to the extent that those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and therefore denies those allegations.

5. Applicant makes no answer to the allegations in Paragraph 5 to the extent that those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies those allegations.

6. Applicant admits that he filed an application to register the mark as set forth in Paragraph 6 in International Class 5 for “dietary supplements,” “food supplements” and “sanitary preparations for medicinal use” and that the U.S. Patent and Trademark Office assigned Serial No. 86969744 to Applicant’s application, however, to the extent that the further allegations state legal conclusions rather than facts, Applicant makes no answer to the further allegations in Paragraph 6.

7. Applicant admits his mark was published for opposition on August 16, 2016, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7 and is unable to admit or deny same.

8. Applicant makes no answer to the allegations in Paragraph 8 to the extent that those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies those allegations.

9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies those allegations.

10. Applicant denies that his COMPLETE BALANCE PRO and Design mark is substantially or highly similar to the Pfizer's Arching Band of Colors Design Trademark in appearance and commercial impression. Applicant denies that the text portion of his mark "has little or no distinctiveness" and that his mark creates a "likelihood of confusion" with the Pfizer mark as set forth in Paragraph 10. Applicant denies that there is a "similarity between the design portion of the applied-for mark and Pfizer's registered mark."


11. Applicant denies that the goods set forth in his application "are identical of closely related to the goods for which Pfizer's Arching Band of Colors Design Trademark is registered and use" as set forth in Paragraph 11. Applicant further denies that "many who encounter Applicant's mark are likely to think that the same company that offers Applicant's products might be authorized by, sponsored by, licensed by, affiliated with or related to the company that offers Pfizer's products."

12. Applicant denies the allegations set for in Paragraph 12.

13. Applicant makes no answer to the allegations as set forth in Paragraph 13 to the extent that those allegations state legal conclusions rather than facts. Notwithstanding, Applicant denies that its mark will cause "confusion, mistake or deception."

14. Applicant denies the allegations set for in Paragraph 14.

15. Applicant denies that Opposer will be damaged by the registration of U.S. Serial

No. 86969744 for the mark , that Applicant's registration of said mark will dilute Pfizer's Arching Band of Color Design Trademark or "give color of exclusive statutory right to



Applicant in violation and derogation of the prior and superior rights of Pfizer,” or that Opposer is entitled to any relief requested in the Opposer’s Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

Applicant asserts the following affirmative defenses.

#### **FIRST AFFIRMATIVE DEFENSE**

One or more of the Opposer’s claims are barred by the equitable defense of laches, acquiescence, waiver or estoppel.

#### **SECOND AFFIRMATIVE DEFENSE**

Applicant hereby gives notice that he may rely on the other defenses that may become available or appear proper during discovery, and hereby reserves his right to amend this Answer to assert any such defenses.

WHEREFORE, Applicant respectfully requests that the Trademark Trial and Appeal Board deny the Opposition and allow the contested mark to register.

Dated: March 27, 2017

/ alan f. feeney /  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this the 27<sup>TH</sup> day of March, 2017, a copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION of REGISTRATION NO. 86/957,167** via U.S. mail, postage prepaid, and addressed as follows:

Paul C. Llewellyn, Esq.  
Arnold & Porter Kaye Scholer LLP  
250 West 55<sup>th</sup> Street  
New York, NY 10019-9710  
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as well as by email to:

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/s/ Alan. F. Feeney

Alan F. Feeney  
Attorney for Applicant